

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1436 be amended to read as follows:

- 1 Page 1, between lines 13 and 14, begin a new paragraph and insert:
- 2 **""Disabled business enterprise" means an individual,**
- 3 **partnership, corporation, limited liability company, or joint**
- 4 **venture of any kind that is owned and controlled by one (1) or**
- 5 **more physically disabled persons."**
- 6 Page 2, between lines 15 and 16, begin a new paragraph and insert:
- 7 **""Physical disability" means a physical impairment that:**
- 8 **(1) substantially limits at least one (1) of the major life**
- 9 **activities of the individual, including the individual's ability**
- 10 **to:**
- 11 **(A) care for himself or herself;**
- 12 **(B) walk;**
- 13 **(C) see;**
- 14 **(D) speak;**
- 15 **(E) hear;**
- 16 **(F) write;**
- 17 **(G) breathe; or**
- 18 **(H) engage in other manual tasks; and**
- 19 **(2) is expected to continue to exist for at least five (5) years.**
- 20 **The term does not include a physical disability based solely on the**
- 21 **use of controlled substances in violation of state or federal law**
- 22 **unless the person has successfully completed a supervised drug**
- 23 **rehabilitation program and is no longer engaging in the illegal use**
- 24 **of controlled substances.**
- 25 **"Physically disabled person" means a person who, in the**
- 26 **written opinion of a licensed physician, has a physical disability."**
- 27 Page 2, line 33, after "on" insert **"disabled,"**
- 28 Page 2, line 33, after "minority" insert **","**
- 29 Page 2, line 41, after "especially" insert **"disabled,"**

- 1 Page 2, line 41, after "minority" insert ",".
- 2 Page 4, line 2, after "Identify" insert "**disabled**,".
- 3 Page 4, line 2, after "minority" insert ",".
- 4 Page 4, line 4, after "of" insert "**disabled**,".
- 5 Page 4, line 4, after "minority" insert ",".
- 6 Page 4, line 6, after "assist" insert "**disabled**,".
- 7 Page 4, line 6, after "minority" insert ",".
- 8 Page 4, line 10, after "Include" insert "**disabled**,".
- 9 Page 4, line 10, after "minority" insert ",".
- 10 Page 4, line 17, after "to" insert "**disabled**,".
- 11 Page 4, line 17, after "minority" insert ",".
- 12 Page 4, line 19, after "of" insert "**disabled**,".
- 13 Page 4, line 19, after "minority" insert ",".
- 14 Page 4, line 36, after "for" insert "**disabled**,".
- 15 Page 4, line 36, after "minority" insert ",".
- 16 Page 4, line 40, after "in" insert "**disabled**,".
- 17 Page 4, line 40, after "minority" insert ",".
- 18 Page 5, line 2, after "" insert "**disabled**,".
- 19 Page 5, line 2, after "minority" insert ",".
- 20 Page 5, line 5, after "each" insert "**disabled**,".
- 21 Page 5, line 5, after "minority" insert ",".
- 22 Page 5, line 11, after "of" insert "**disabled**,".
- 23 Page 5, line 11, after "minority" insert ",".
- 24 Page 5, line 13, after "uncertified" insert "**disabled**,".
- 25 Page 5, line 13, after "minority" insert ",".
- 26 Page 5, line 15, after "for" insert "**disabled**,".
- 27 Page 5, line 15, after "minority" insert ",".
- 28 Page 5, between lines 22 and 23, begin a new paragraph and insert:
- 29 "SECTION 4. IC 4-13-16.5-4, AS AMENDED BY P.L.41-2003,
- 30 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 31 JULY 1, 2004]: Sec. 4. (a) Before January 1 of even-numbered years,
- 32 the department shall determine whether, during the most recently
- 33 completed two (2) year period ending the previous July 1, the goals set
- 34 under section 2(f)(7) of this chapter have been met.
- 35 (b) The department shall adopt rules under IC 4-22-2 to ensure that
- 36 the goals set under section 2(f)(7) of this chapter are met. Expenditures
- 37 with business enterprises that qualify ~~as both a minority business~~
- 38 ~~enterprise and a women's business enterprise~~ **under more than one**
- 39 **(1) category** may be counted toward the attainment of the goal for a:
- 40 **(1) disabled business enterprise;**
- 41 **(2) minority business enterprises; or**
- 42 ~~(2) (3)~~ **(3) women's business enterprises;**
- 43 at the election made by the procurer of goods, services, or goods and
- 44 services, but not ~~both~~ **more than one (1).**"
- 45 Page 5, line 27, before "minority" insert "**disabled business**

1 **enterprise, a".**

2 Page 5, line 27, after "enterprise" insert ",".

3 Page 5, line 30, before "minority" insert "**disabled business**
4 **enterprise, a".**

5 Page 5, line 30, after "enterprise" insert ",".

6 Page 5, line 32, before "minority" insert "**disabled business**
7 **enterprise, a".**

8 Page 5, line 32, before "or" insert ",".

9 Page 5, line 39, after "a" insert "**disabled business enterprise, a".**

10 Page 5, line 40, before "or" insert ",".

11 Page 5, between lines 40 and 41, begin a new paragraph and insert:
12 "SECTION 7. IC 4-30-1-2, AS AMENDED BY P.L.195-2001,
13 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2004]: Sec. 2. In construing this article, it is the intent of the
15 general assembly that the following policies be carried out:

16 (1) That the lottery games be operated by the state lottery
17 commission, which is created by IC 4-30-3 as a separate body
18 politic and corporate from state government and should function
19 as much as possible as an entrepreneurial business enterprise.

20 (2) That the general assembly recognizes that the operation of a
21 lottery is a unique activity for state government and that policies
22 and procedures appropriate for the performance of other
23 governmental functions are not necessarily appropriate for the
24 operation of a lottery.

25 (3) That the lottery games be operated as a self-supporting
26 revenue raising operation.

27 (4) That the commission be accountable to the general assembly
28 and the people of Indiana through a system of audits and reports
29 and by complying with financial disclosure, open meetings, and
30 public record laws.

31 (5) That the commission ensure the equitable participation of **the**
32 **disabled**, minorities, and women in all phases of the lottery,
33 including instant game and on-line retailers and vendors. The
34 commission shall establish annual goals:

35 (A) for the use of **disabled**, minority, and women's business
36 enterprises (as defined in IC 4-13-16.5-1 and
37 IC 4-13-16.5-1.3) in construction, professional services, other
38 services, and supplies; and

39 (B) derived from a statistical analysis of utilization study of
40 lottery contracts that are required to be updated every five (5)
41 years.

42 The commission shall, in cooperation with the Indiana department
43 of administration, adopt rules under IC 4-22-2 to ensure that the
44 goals set under this subdivision are met.

45 (6) That lottery game advertising and promotion shall be
46 consistent with the dignity and integrity of the state.

SECTION 8. IC 4-33-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. The general assembly declares that the opportunity for full **disabled**, minority, and women's business enterprise participation in the riverboat industry is essential if social and economic parity is to be obtained by **physically disabled**, minority, and women business persons and if the economies of the riverboat cities are to be stimulated as contemplated by this article.

SECTION 9. IC 4-33-14-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 1.5. As used in this chapter, "disabled business enterprise" has the meaning set forth in IC 4-13-16.5-1."**

Page 6, line 18, after "of" insert "**disabled**,".

Page 6, line 18, after "minority" insert ",".

Page 6, line 26, after "to" insert "**disabled**,".

Page 6, line 27, after "minority" insert ",".

Page 6, line 28, after "each" insert "**disabled business enterprise**,".

Page 6, line 29, before "or" insert ",".

Page 7, line 2, before "minority" insert "**disabled**,".

Page 7, line 2, after "minority" insert ",".

Page 7, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 11. IC 4-33-14-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 5.5. As used in this chapter, "physically disabled" has the meaning set forth in IC 4-13-16.5-1.**

SECTION 12. IC 4-33-14-6, AS AMENDED BY P.L.92-2003, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. If the commission determines that the provisions of this chapter relating to expenditures and assignments to **disabled**, minority, and women's business enterprises have not been met, the commission may suspend, limit, or revoke the owner's license or operating agent's gaming operations, or may fine or impose appropriate conditions on the licensee or operating agent to ensure that the goals for expenditures and assignments to **disabled**, minority, and women's business enterprises are met. However, if a determination is made that a person holding an owner's license or an operating agent has failed to demonstrate compliance with this chapter, the person has ninety (90) days from the date of the determination of noncompliance to comply."

Page 7, line 8, after "for" insert "**disabled**,".

Page 7, line 8, after "minority" insert ",".

Page 7, line 15, before "minority" insert "**disabled**,".

Page 7, line 15, after "minority" insert ",".

Page 7, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 15. IC 5-16-6.5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2004]: **Sec. 3.5. As used in this chapter, "disabled business enterprise" has the meaning set forth in IC 4-13-16.5-1.**

SECTION 16. IC 5-16-6.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. A contractor who, knowingly or intentionally, falsely represents to a public agency that the contractor:

(1) is a **disabled business enterprise**, a disadvantaged business enterprise, or a women-owned business enterprise; or

(2) will use the services or commodities of a **disabled business enterprise**, a disadvantaged business enterprise, or a women-owned business enterprise;

is in breach of contract.

SECTION 17. IC 5-16-6.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If a breach of contract occurs under section 4 of this chapter, the public agency shall suspend all payments to the contractor under that contract unless it determines that the contractor made a good faith effort to avoid the breach but was unable to do so.

(b) If the public agency determines that the contractor did not act to avoid the breach, it may:

(1) rescind the contract and recover all amounts paid under it if the breach occurs under section 4(1) of this chapter;

(2) recover all amounts paid to the contractor under the contract that were intended for expenditure with a **disabled business enterprise**, a disadvantaged business enterprise, or a women owned business enterprise if the breach occurred under section 4(2) of this chapter; or

(3) employ any legal or administrative remedies that the agency prescribes by rule or in the contract."

Page 16, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 28. IC 35-43-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A person who knowingly or intentionally falsely represents any entity as a **disabled business enterprise (as defined in IC 4-13-16.5-1)**, a disadvantaged business enterprise (as defined in IC 5-16-6.5-1), or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist **disabled business enterprises**, disadvantaged business enterprises, or women owned business enterprises in obtaining contracts with public agencies for the provision of goods and services commits a Class D felony.

(b) A person who knowingly or intentionally falsely represents an entity with which the person will subcontract all or part of a contract with a public agency (as defined in IC 5-16-6.5-2) as a **disabled business enterprise (as defined in IC 4-13-16.5-1)**, a disadvantaged business enterprise (as defined in IC 5-16-6.5-1), or a women owned

enterprise (as defined in IC 5-16-16.5-3) in order to qualify for certification as an eligible bidder under a program conducted by a public agency designed to assist **disabled business enterprises**, disadvantaged business enterprises, or women owned enterprises in obtaining contracts with public agencies for the provision of goods and services commits a Class D felony.

SECTION 29. IC 36-1-9.5-48 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 48. (a) An entity may revoke a certificate of qualification only if the entity determines that the contractor or subcontractor has done at least one (1) of the following:

(1) Fails to timely pay or satisfactorily settle any bills due for labor and material on former or existing contracts.

(2) Violates:

(A) a state or federal statute; or

(B) a rule or regulation of a state or federal department, board, bureau, agency, or commission.

(3) Defaults on a contract.

(4) Fails to enter into a contract with the entity.

(5) Falsifies any document required by the entity, the state board of accounts, or any other agency.

(6) Is convicted of a bidding crime in any jurisdiction.

(7) Enters a plea of guilty or nolo contendere to a bidding crime in any state.

(8) Does any of the following:

(A) Makes a public admission concerning a bidding crime in any state.

(B) Makes a presentation as an unindicted co-conspirator in a bidding crime in any state.

(C) Gives testimony that is protected by a grant of immunity in a trial for a bidding crime in any jurisdiction.

(9) Fails to perform any part of an existing or previous contract.

(10) Fails to submit in a timely manner information, documented explanations, or evidence required in the contract documents or proposal.

(11) Has been debarred by a federal agency.

(12) Failed to comply with any proposal requirements established by the entity concerning **disabled business enterprise goals**, disadvantaged business enterprise goals, or women business enterprise goals.

(b) An entity shall provide notification of a pending action for revocation in writing, setting forth the grounds for the proposed certificate revocation. The revocation becomes effective on the date determined by the entity.

(c) A period of disqualification under this chapter may not exceed two (2) years."

Page 17, line 21, after "(1)" insert "**A disabled business enterprise**."

- 1 **(2)".**
 - 2 Page 17, line 22, delete "(2)" and insert "**(3)**".
 - 3 Page 17, line 23, delete "(3)" and insert "**(4)**".
 - 4 Page 18, after line 7, begin a new paragraph and insert:
 - 5 "SECTION 33. [EFFECTIVE JULY 1, 2004] **IC 35-43-5-9, as**
 - 6 **amended by this act, applies only to crimes committed after June**
 - 7 **30, 2004."**
- (Reference is to EHB 1436 as printed February 20, 2004.)

Senator DROZDA